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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,622	03/23/2004	Sasan Danechi	Walstijn US-3	4037

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EXAMINER

JOHNSON, JERROLD D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

ED

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,622	DANECHI, SASAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jerrold Johnson	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>23 March 2004</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "the side of the lever that faces the container" has no antecedent basis and would be better served by "the lever includes a side that faces the container that includes..."

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4, and 6-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Avery US 102,471.

Re claim 1, Avery discloses a container for swabs comprising:

a housing defining a chamber with an opening inherently capable of receiving and containing a plurality of swabs therein;

a hinged lid B for alternately opening and closing said opening of said housing, said lid being connected to said housing by a hinge C and said lid being capable of moving in a substantially rotational motion pivoting about said hinge, moving between a closed position and an open position relative to said opening of said housing;

a movable internal support member E movably disposed within said chamber for supporting said swabs, said support member being capable of moving between a first position in which said swabs do not substantially protrude from said opening, and an **(should read "a")** second position in which said swabs substantially protrude from said opening,

a mechanism D,F linking the rotational motion of said lid to at least partially cause movement of said support member such that the support member is disposed in the first position when the lid is in the closed position and the support member is disposed in the second position when the lid is in the open position.

Re claim 2, wherein the movement of said support member is substantially translational.

Re claim 3, wherein the mechanism linking the rotational motion of the lid with movement of the support member is a lever substantially fixedly connected to said lid, and operatively connected in a movable contact relation to said support member such that as the lid is moved, the lever is caused to move therewith in a rotational motion and the lever causes by contact movement a motion of the support member.

Re claim 4, the lever creates a levering effect in its movable contact relation with said support member to move the support member by levering the support member.

Re claim 6, the lever creates an effect selected from the group of a levering effect and a camming effect either of which providing for moving the support member in a translational direction.

Re claim 7, said support member has attached thereto at least one extension member (the side wall of the support member) extending towards the hinge; and wherein the lever extends from the lid adjacent the hinge, and the extension member has a recess (unidentified recess within which the end of element F extends, see drawing figures) formed therein for operatively receiving a free end of the lever therein, the free end of the lever operatively engaging the extension member via the recess, operative to transmit motion thereto.

Re claim 8, wherein said opening of said housing opens substantially upwardly; wherein said opening provides for receiving a plurality of swabs in a substantially upright position; wherein said support member is a bottom member capable of supporting the swabs in a substantially upright position; and, wherein said first and second positions of said support member are respective lower and upper positions within the chamber of said housing.

Re claim 9, said bottom member has attached thereto at least one upright member (the side wall of the support member) extending upwardly towards the hinge.

Re claim 10, the lid is provided with a lever D,F extending therefrom adjacent the hinge C, and the upright member is provided with a recess (unidentified) for receiving a free end of the lever therein.

Re claim 11, said lever extends at substantially right angle to said lid.

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Re claim 12, the side of the lever that faces the container is provided with a contour that ensures a smooth translation of a movement of the lid to a movement of the bottom member. All sides of the lever face the container in Avery.

Re claim 13, the movement of said bottom member is substantially translational alternately upwardly and downwardly.

Re claim 14, the mechanism linking the rotational motion of the lid with movement of the support member is a lever substantially fixedly connected to said lid, and operatively connected in a movable contact relation to said support member such that as the lid is moved, the lever is caused to move therewith in a rotational motion and the lever causes by contact movement a motion of the support member.

Re claim 15, the lever creates an effect selected from the group of a levering effect and a camming effect either of which providing for moving the support member in a translational direction.

Re claim 16, the container is capable of containing swabs selected from the group consisting of cotton and cottonish material.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avery in view of de la Rocha US 5,330,056.

Re claim 17, Avery, as recited above, discloses a container suitable for containing swabs, but does not disclose swabs. Avery does disclose the required structure set forth in claim 17, as is set forth above.

De la Rocha discloses a container for containing swabs where there is an internal movable support member disposed with a chamber for translational movement.

De la Rocha evidences the suitability of Avery to contain swabs.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Avery to contain swabs as taught by de la Rocha, as the container of Avery is suitable to perform such a function, and to increase the uses of a container increases the value of that container.

Re method claims 18-20, the method of dispensing swabs is inherent in the combined teachings of Avery in view of de la Rocha.

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2. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Avery in view of Noble US 1,685,768.

It is unclear if the lever of Avery could be considered to cammingly move the support member.

However, Noble shows how a cam extension 10 added to a long lever arm 9 acts as a cam to cammingly lift the support member. The cam extension 10 is a contact surface which is eccentric with respect to the axis of rotation, i.e. the hinge location. Through the rotational movement of a contact surface of the cam extension 10 the contacted surface (the support member) is cammingly moved.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Avery to include a cam such as is taught by Noble in place of the from the lever end which is engaged in the recess. The cam lever end as taught by Noble, would provide an attachment of the lever arm to the support member which would allow the easy removal of the entirety of the support member from the housing. This task would be difficult in Avery considering that the lever arm end is disposed within a recess in the support member.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ



Mickey Yu  
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